

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

In re Case Nos. 02-55527-JRG and
02-55528-JRG
SAN JOSE MEDICAL MANAGEMENT,
INC., a California Corporation,
and affiliated Chapter 11 cases,
Chapter 11
Debtors.

ORDER ON FIRST AND FINAL FEE
APPLICATION OF MOSS ADAMS LLP

I. INTRODUCTION

Moss Adams LLP's employment as accountant for the debtors was approved by the court on September 18, 2003, and made effective as of August 28, 2003. Moss Adams submitted its first and final fee application to the court seeking final approval of \$118,282.72 in fees and \$3,876.28 in expenses for services rendered from September 1, 2003 through September 26, 2004.¹

¹ In its fee application, Moss Adams' details of its billing, attached as Exhibit A to the fee application, refers to a fee discount of \$16,029.54. However, as discussed in the audit report, Moss Adams does not identify which entries are related to the fee discount. The audit was based on the fees computed without regard to the discount.

The audit report also states that there is a discrepancy in which \$150.00 less than the

ORDER ON FIRST AND FINAL FEE APPLICATION OF MOSS ADAMS LLP

1 The court ordered an audit of Moss Adams' fees on December 9, 2004.
2 The audit report was submitted to the court on April 11, 2005. The court
3 gave interested parties an opportunity to respond to the audit. The only
4 comment received was a general comment from the United States Trustee
5 (UST). The UST asked that the court take into consideration that
6 professionals such as Moss Adams are less familiar with the bankruptcy
7 system and the court's fee guidelines.² At the fee hearing on June 16,
8 2005, the court gave Moss Adams an additional opportunity to respond to
9 the audit report and to date has received no response. The audit report
10 highlights several issues that will result in a reduction in fees.

11 **II. FEES**

12 **A. Compensation for pre-retention and post-confirmation services** 13 **is disallowed.**

14 The audit report highlights that Moss Adams billed for services prior
15 to the date Moss Adams' employment became effective, August 28, 2003. [See
16 Exhibit B-1.]³ Thus, fees will be reduced by \$4,826.00 for pre-retention
17 services.

18 The audit also highlights that there are \$370.00 in fees that are
19 related to post-confirmation billing. [See Exhibit B-2.] No description
20 is given for the services rendered. Thus, these fees are denied.

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23 amount on the detail was included on the invoice. There also was an invoice in the amount of
24 \$2,300.16 that was not included in the final total. The court considers before it total fees
25 in the amount of \$118,282.72.

26 ² The Bankruptcy Court for the Northern District of California maintains Guidelines for
27 Compensation of Professionals. The District's Guidelines for Compensation and Expense
28 Reimbursement of Professionals and Trustees are available on the District's website at
<http://www.canb.uscourts.gov>.

³ Unless otherwise noted, all references to exhibits are to the exhibits that appear in
the "Review and Analysis of Final Fee Application Submitted by Moss Adams LLP," which was filed
with the court on April 11, 2005.

1 **B. Fees sought for services that are not adequately described will**
2 **be reduced.**

3 As for entries that have no description of activity, the audit points
4 out that there are \$32,560.81 in fees for which no description has been
5 included. [See Exhibit C.] As discussed in the audit report, the entries
6 do fall within specific categories of work so some general idea of the
7 work completed can be inferred. Some of the travel entries missing a task
8 description are classified as "Travel Time." However, no description is
9 provided about the origination of the trip, the destination of the trip,
10 and the purpose of the travel. In addition, the audit report highlights
11 entries with vague descriptions. [See Exhibit E.] Entries on Exhibit E
12 total \$22,641.15. While these entries fall within specific categories of
13 work, in some instances, the description and category provide the court
14 with little information.

15 Time entries are not simply to record the number of hours worked;
16 they also should detail the type of work done. Regardless of the method
17 of compensation and regardless of the type of professional fees at issue,
18 the court must evaluate the complexity and necessity of work done on
19 behalf of the estate in order to determine appropriate compensation. In
20 re Poseidon Pools of America, Inc., 180 B.R. 718, 729-31 (Bankr. E.D.N.Y.
21 1995).

22 The court bears in mind the comments of the UST that professionals
23 such as Moss Adams are not as familiar with the court's fee guidelines.
24 In addition, the order for Moss Adams' employment states that invoices
25 were subject to the review of the UST and the Committee and no payments
26 were to be made unless approved. Having received no specific objections
27 from either of these parties, the court will reduce the fees that appear
28 on Exhibit C and Exhibit E by 50% for lack of adequate description. Thus,

1 fees will be reduced by \$27,600.98.

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3 **C. Billing increments at .50 and 1.0 hour increments are so
4 extensive that a general reduction is warranted.**

5 The audit report also points out the number of entries in which Moss
6 Adams billed in increments of .50 or 1.0 hour. [See Exhibit D.] These
7 entries total \$114,382.31, and taking into account the entries that appear
8 on the exhibits regarding no or vague entry descriptions, [see Exhibits
9 C and E], the entries total \$65,586.30.

10 The court's Guideline 12 requires that professionals keep time
11 records in minimum increments of .10 hour and professionals who utilize
12 a minimum billing increments greater than .10 hour are subject to a
13 reduction of their request. Given the number of entries in increments of
14 .50 and 1.0 hours, the court reduces the total fees requested by
15 \$5,000.00.

16 **D. Time entries reflecting administrative/clerical activities are
17 not compensable by the estate.**

18 The audit report points out entries that appear to be related to
19 administrative/clerical activities. [See Exhibit J.] Clerical services
20 are overhead expenses and are not compensable under § 330(a) of the
21 Bankruptcy Code. Sousa v. Miguel (In re United States Trustee), 32 F.3d
22 1370, 1374 (9th Cir. 1994). Having reviewed the entries in Exhibit J, the
23 court finds the entries to be clerical and administrative in nature, and
24 thus denies \$504.90 in fees.

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26 **III. CONCLUSION**

27 In reviewing the other fee categories and expenses in the audit, the
28 court takes no further reductions. The court denies a total of \$38,301.88
in fees requested on the final fee application. Thus, the court approves

UNITED STATES BANKRUPTCY COURT

For The Northern District Of California

1 Moss Adams' request in the amount of \$79,980.84 in fees and \$3,876.28 in
2 expenses. Total fees and expenses approved on a final basis are
3 \$83,857.12.

4 DATED: _____

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8 JAMES R. GRUBE
UNITED STATES BANKRUPTCY JUDGE
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Case No. 02-55527-JRG
02-55528-JRG

UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

CERTIFICATE OF SERVICE

I, the undersigned, a regularly appointed and qualified Judicial Assistant in the office of the Bankruptcy Judges of the United States Bankruptcy Court for the Northern District of California, San Jose, California hereby certify:

That I, in the performance of my duties as such Judicial Assistant, served a copy of the Court's: ORDER ON FIRST AND FINAL FEE APPLICATION OF MOSS ADAMS LLP by placing it in the United States Mail First Class, postage prepaid, at San Jose, California on the date shown below, in a sealed envelope addressed as listed below.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on _____ at San Jose, California.

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